

**WRITTEN TESTIMONY IN OPPOSITION TO RAISED HOUSE BILL NO. 5611
“AN ACT CONCERNING NOTICES FOR ELECTIONS, PRIMARIES AND
REFERENDA”**

By Mark J. Sommaruga, Esq.
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To Co-Chairs Cassano and Jutila and the members of the Government Administration and Elections Committee:

My name is **Mark J. Sommaruga**. I am a member of the law firm of Pullman & Comley, LLC, which represents numerous school districts and municipal entities in Connecticut. For purposes of full disclosure, my law firm served as legal counsel for Regional School District No. 14 with respect to legal challenges to a high school building project referendum that were based upon claims that the referendum should be invalidated due to a procedural error regarding “legal notice.” Over the course of two years, and in two different lawsuits, we successfully asserted that any failure by the town clerks to strictly comply with the back-of-the-newspaper “legal notice” requirement should not serve to invalidate the referendum results, especially because there was no indication or proof that the alleged failures actually affected the outcome of the referendum. Our efforts culminated in October of 2015 with the Connecticut Supreme Court ruling in favor of the School District. *Arras v. Regional School District No. 14*, 319 Conn. 245 (2015).

I hereby speak in opposition to **Raised House Bill No. 5611, “An Act Concerning Notices for Elections, Primaries and Referenda.”** Specifically, I am concerned about the portions of this bill that would automatically void municipal and state elections (including primaries) and referenda simply due to the fact that a town clerk may have failed to strictly comply with the back of the newspaper “legal notice” requirement. For purposes of further disclosure, I am not being paid to provide this testimony, and this testimony does not reflect the views of my law firm (or any clients) but rather just me.

Imagine that there has been an election for mayor in a midsized town. Also imagine that one candidate won the election by a healthy margin, in an election that was well-covered by the media and for which there was substantial publicity due to the efforts of the candidates, the campaigns and their supporters. Finally, imagine that in the lead up to this election, the town clerk forgot to have placed in the back of the newspaper (usually near the “want ads”) the so-called “legal notice” concerning the fact that an election would be taking place. Currently, in light of a well-developed body of case law concerning elections, the results of the election would stand unless a party challenging the results establishes that the error at issue created substantial doubt as to the outcome of the election. However, **House Bill 5611** would automatically void the election results, and would cause the need for a re-vote (even if there was no evidence that the error in notice affected any voters or votes).

The courts in Connecticut have articulated a thoughtful approach to claims of errors in the conduct of elections. Election results will be only overturned where “(1) there were substantial violations of the requirements of the [governing elections statutes] ... and (2)

as a result of those violations, the reliability of the result of the election is seriously in doubt.” *Caruso v. City of Bridgeport*, 285 Conn. 618, 653 (2008). The courts recognize that automatically requiring a new election every time there is a violation of an elections law would be grossly unfair to the voters. As aptly noted by Connecticut’s Supreme Court, an election is a “‘snapshot’ of ‘the will of the people as recorded on [a] particular day, after [a] particular campaign, and as expressed by the electors who voted **on that day**.” *Bortner v. Town of Woodbridge*, 250 Conn. 241, 256 (1999). When an election or a referendum is invalidated, all of the enormous effort and expense that went into the official planning and public campaigns preceding the election or referendum are lost, and the persons who voted at the first election or referendum are effectively disenfranchised. *Id.* A person can still successfully challenge an election if there were violations of a statute, but one must establish that any violations actually may have affected the election results before the election will be overturned.

Our courts’ well-established standard for assessing claims of elections violations (which is also utilized in many other states) allows for an individualized consideration of whether a failure to strictly comply with an election statute actually may have affected the outcome. Sadly, the proposed bill (**Raised House Bill No. 5611**) would eliminate this individualized inquiry with respect to just one type of election laws (the archaic back of the newspaper “legal notice” requirement) and would instead automatically void the results of the election, even (as in the recently litigated Regional School District No. 14 case) there is not one scintilla of evidence that a single vote or voter was affected by a failure to strictly comply with the “legal notice” requirement.

Raised House Bill 5611 is not only a solution in search of a problem, but actually causes a problem where none exists. At a time where newspaper notice requirements are increasingly obsolete and should arguably be repealed, this proposed bill would instead double down on this requirement and could serve to thwart the will of the people in a particular election. Again, under the current laws, nothing prevents an elector from challenging an election for lack of strict compliance with the newspaper “legal notice” requirement, but such a challenge should be required to show how the error affected the outcome of the vote before there is a “do-over” in an election. In short, absent such prejudice, the will of the majority of voters should not suffer due to any procedural or technical defect in an election via the actions of elections officials. As such, **Raised House Bill No. 5611** should be rejected by this Committee.

Thank you for your time and consideration. If you should have any questions, please feel free to contact me (msommaruga@pullcom.com).